

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :

FIDELITY INFORMATION SERVICES, : Docket #09cv7589  
1:09-cv-07589

Plaintiffs, :

- against - :

DEBTDOMAIN GLMS PTE, LTD., :  
et al., : New York, New York

Defendants. : July 28, 2010

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PROCEEDINGS BEFORE  
MAGISTRATE JUDGE KEVIN N. FOX,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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emails from other unidentified employees, the request is denied.

Let me turn now to there was a request for an order to produce Ariel Elchaim and a 30(b)(6) witness for depositions late July, and to award defendants costs and fees in connection with depositions, do the depositions exceed ten?

MR. BALBER: They do not, Your Honor.

MR. MOORE: Your Honor, if you just include Ariel Elchaim, they do not. I will say that we did offer Ariel Elchaim during the discovery period as a 30(b)(6) witness, we had come to what we thought was an agreed upon schedule, including a date for Mr. Elchaim; defendants repudiated that agreement, that agreed upon schedule and insisted upon changing some dates. We said that June 22<sup>nd</sup> was not available for Mr. Elchaim, but that the June 24 was and that we were willing to switch the deposition for David Levy which was then scheduled for June -- July 22.

Defendants did not say that Mr. Levy was unavailable that day, but they apparently just wanted the order of the depositions that they wanted. And so they refused to accept Mr. Elchaim's (inaudible) he was available, and we don't think that that gamesmanship should be rewarded.

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MR. BALBER: Your Honor, two issues, let's just be clear of the number, we have taken eight depositions, not nine, not ten, I believe we're entitled to two more. Those, we respectfully are requesting Mr. Elchaim and a 30(b)(6) witness. As to scheduling, we had this conversation weeks ago, Your Honor, where Fidelity unilaterally identified the date and then (indiscernible) couldn't do it on that date, they claim we're in breach of an agreement.

So they're (indiscernible) two depositions, Your Honor, I don't know if it's worth rehashing the scheduling issues, it's giving me a headache. So, you know, we can agree to disagree as to whether we had picked dates or not picked dates for those two depositions, but we would like them to be scheduled in the next couple of weeks.

THE COURT: Do you want me to pick dates, is that what you're asking?

MR. BALBER: No, Your Honor, I'd like Your Honor to -- I mean I've never, quite frankly, been involved in a litigation where there is so much absurd time spent by the parties arguing and debating over things that sophisticated counsel in sophisticated cases should be able to agree upon.

THE COURT: I agree with you, wholeheartedly, which is why I indicated that the volume of material that has come to me is excessive and unnecessary.

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MR. BALBER: And I would add preposterous, Your Honor. On this note, we would like the depositions ordered, and I would hope, hope, hope, that Mr. Moore and I can agree on dates for those two depositions without getting the Court involved.

THE COURT: All right, so there will be an examination of Mr. Elchaim and a 30(b)(6) witness.

MR. BALBER: Thank you, Your Honor.

THE COURT: Fidelity sent a letter dated July 23, 2010, regarding the Tamarind (phonetic) subpoena. The defendants must comply with the subpoena.

MR. BALBER: Your Honor, we have, again, I just want to make sure we're on the same page, we've been served objections. Rather than have a meet and confer conversation about what the objections are, we got the letter to Your Honor, if you ordered that we produce all documents without regard to objections or that we discuss what the appropriate scope should be or something else.

MR. MOORE: Your Honor, this is Mr. Moore, the defendants made their motion to quash, they did not raise the issue of documents which were sought for the deposition, they did not seek to meet and confer before moving to quash. They (inaudible) to producing even a single scrap of paper in response to the subpoena, that is not a good faith

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2 response and they should be ordered to produce all the  
3 documents responsive to our request.

4 MR. BALBER: Your Honor, we received it, we issued  
5 the subpoena for a deposition, we received a subpoena for  
6 documents. As to deposition, we moved to quash. Our motion  
7 was denied. We offered to produce Mr. Levy in response to  
8 that subpoena.

9 With regard to the subpoena for documents, we  
10 served timely objections and responses. All I'm asking is  
11 to have a conversation with Mr. Moore of that scope. I'm not  
12 sure why it's inappropriate for a third party to serve  
13 objections and responses timely to a document subpoena.

14 THE COURT: Well I'm not going to bar you from  
15 having a conversation with your adversary. I've tried  
16 throughout all of these conferences to encourage the parties  
17 to have conversations and resolve disputes so that you would  
18 not have to come to me. Now, as I understand it, the time  
19 for complying is the 30<sup>th</sup> of July for the deposition, isn't  
20 that correct?

21 MR. MOORE: Your Honor, we were offered that date,  
22 but that was without any documents. So I think that we would  
23 want to get the documents before we depose the witness.

24 MR. SOBEL: Your Honor, this is Jonathan Sobel, I  
25 apologize for having two voices for Fidelity. The concern